From: Jarvis Cochrane
To: Microsoft ATR
Date: 1/27/02 3:48am
Subject: Microsoft Settlement

Dear Ms Hesse,

I have read with interest the documents related to the proposed settlement with Microsoft, and wish to submit the following comments:

As an Australian IT professional I believe this case, and the proposed settlement, to have international significance; and that in this matter, as in many others, the United States will be setting a precedent or a standard that will be referred to by other nations.

It is my understanding that the proposed settlement only has legal force within the United States, and that nothing in the settlement prevents Microsoft from continuing its anti-competitive practices in other jurisdictions, or moving 'non-compliant' operations offshore.

I strongly approve of the provisions that require Microsoft to make the APIs and communications protocols of its software products available to other software developers. Microsoft have used proprietary APIs and communications protocols to prevent the interoperability of their software with other products. Apart from the anti-competitive nature of the practice, it has significantly increased the complexity and cost of multi-platform environments.

I believe, however, that the provisions requiring Microsoft to make its APIs and communications protocols available to software developers do not go far enough to effectively 'level the playing field.' My understanding of the proposed settlement is that some API or protocol specifications may be made available only to selected developers, or may not be made available at all where Microsoft can demonstrate that making such information available would present a risk to system security or intellectual property rights.

As an IT support professional and software developer, I can see no justification other than commercial advantage,for not making the details of all APIs and communications protocols publically available at no cost. I strongly encourage you to consider such a measure as part of a revised settlement.

I am concerned that appears to be no fine or other punitive measure imposed upon Microsoft, even though the company has been found guilty of breaching competition law, and has used its market and position and illegal business practices to generate unreasonable profits. There is also the matter of the 'hidden' or 'follow on' costs borne by consumers, business and the IT industry as a consequence of Microsoft preventing the correct interoperability.

As I have followed this case in the media, I have regularly noted that Microsoft has shown a lack of respect, perhaps even a contempt, for the legal and judicial process.

For these reasons, I would respectfully suggest that it is appropriate and just for a large fine to be imposed upon Microsoft, such monies to be used for international charitable works. To be effective as a punitive measure, such a fine would obviously need to be in the order of some billions of dollars.

In general terms, and in conclusion, I believe the proposed settlement addresses the relevant issues, but does not sufficiently restrict Microsoft, prevent Microsoft from pursuing alternative means to maintain monopoly power, or impose appropriate punitive damages on Microsoft.

I would like to express my appreciation to the Department of Justice for pursuing this matter, and the hope that my comments will be of interest to you.

Regards,

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